

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NINTENDO CO., LTD., and NINTENDO OF AMERICA INC.,
Petitioners,

v.

ANCORA TECHNOLOGIES, INC.,
Patent Owner.

Case IPR2021-01338
U.S. Patent No. 6,411,941 B1

PATENT OWNER'S RESPONSIVE BRIEF ON REMAND

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Patent Trial and Appeal Board
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1002	Image File Wrapper of U.S. Patent No. 6,411,941 (“File History”)
1003	Declaration of Andrew Wolfe, Ph.D. (“Wolfe Decl.”)
1004	U.S. Patent No. 4,658,093 (“Hellman”)
1005	U.S. Patent No. 5,892,906 (“Chou”)
1006	U.S. Patent No. 5,933,498 (“Schneck”)
1007	Reserved
1008	Reserved
1009	Reserved
1010	Reserved
1011	Claim Construction Order, <i>Ancora Techs., Inc. v. Apple Inc.</i> , No. 4:11-cv-06357 (N.D. Cal. Dec. 31, 2012) (ECF No. 107).
1012	Final Claim Constructions of the Court, <i>Ancora Techs., Inc. v. LG Elecs., Inc.</i> , No. 1:20-cv-00034 (W.D. Tex. June 2, 2020) (ECF No. 69).
1013	Supplemental Claim Construction Order, <i>Ancora Techs., Inc. v. LG Elecs., Inc.</i> , No. 1:20-cv-00034 (W.D. Tex. Aug. 19, 2020) (ECF No. 93).
1014	Civil Minutes re Telephonic Markman Hearing, <i>Ancora Techs., Inc. v. TCT Mobile (US), Inc.</i> , No. 8:19-cv-02192 (C.D. Cal. Nov. 12, 2020) (ECF No. 66) (attaching “The Court’s Final Ruling on Claim Construction (<i>Markman</i>) Hearing,” but also ordering further meet and confer on subject).
1015	Civil Minutes re Telephonic Markman Hearing, <i>Ancora Techs., Inc. v. TCT Mobile (US), Inc.</i> , No. 8:19-cv-02192 (C.D. Cal. Nov. 19, 2020) (ECF No. 69) (confirming no change to “The Court’s Final Ruling on Claim Construction (<i>Markman</i>) Hearing”).
1016	Decision Granting Institution of Inter Partes Review, TCT Mobile (US) Inc. v. <i>Ancora Technologies, Inc.</i> , No. IPR2020-01609 (Feb. 16, 2021) (Paper No. 7) (“TCL Institution Decision”).
1017	Decision Granting Institution of Inter Partes Review, <i>Sony Mobile Commc’ns AB v. Ancora Technologies, Inc.</i> , No.

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1034	Transcript of the Deposition of Miki Mullor, July 12, 2022 (Confidential)
1035	Transcript of the Deposition of David Martin, Ph.D., July 14, 2022
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1037	Denon DP-35F/DP-45F Instruction Manual, Nippon Columbia Co., Ltd.
1038	Excerpts from <i>Dictionary of Computing</i> , 4 th ed., Oxford University Press, 1996
1039	U.S. Patent No. 5,568,552 to Davis
1040	Guttman, B., et al., <i>Computer Security</i> , National Institute of Standards and Technology, 1995)
1041	Kaliski, B., “PKCS #1: RSA Encryption,” RFC 2313, The Internet Society, Network Working Group, March 1998
1042	U.S. Patent No. 5,724,425 to Chang et al.
1043	U.S. Patent No. 5,935,246 to Benson
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1058 – 1069	RESERVED
1070	Opening Claim Construction Brief, <i>Ancora Techs., Inc. v. LG Electronics Inc. et al.</i> , No. 1:20-cv-00034 (W.D. Tex. April 9, 2020) (ECF No. 47)
1071	Responsive Claim Construction Brief, <i>Ancora Techs., Inc. v. LG Electronics Inc. et al.</i> , No. 1:20-cv-00034 (W.D. Tex. April 10, 2020) (ECF No. 50)

1072	Reply Claim Construction Brief, <i>Ancora Techs., Inc. v. LG Electronics Inc. et al.</i> , No. 1:20-cv-00034 (W.D. Tex. April 27, 2020) (ECF No. 53)
1073	Opening <i>Markman</i> Brief, <i>Ancora Techs., Inc. v. HTC America, Inc. et al.</i> , No. 2:16-cv-01919-RAJ (W.D. Washington September 23, 2019) (ECF No. 59)
1074	Ancora Technologies, Inc.’ Responsive <i>Markman</i> Brief, <i>Ancora Techs., Inc. v. HTC America, Inc. et al.</i> , No. 2:16-cv-01919-RAJ (W.D. Washington October 7, 2019) (ECF No. 62)
1075	Ancora Technologies, Inc.’s Disclosure Of Extrinsic Evidence; <i>Ancora Techs., Inc. v. Google, Inc. et al.</i> , No. 6:21-cv-00735, 0737, 00738 (W.D. Tex. January 13, 2022)
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1078	Petitioner’s Oral Hearing Demonstratives
2001	Microsoft Corporation’s Request for <i>Ex Parte</i> Reexamination Image File Wrapper, Control No. 90010560
2002	<i>Ancora Techs., Inc. v. Apple, Inc.</i> , 744 F.3d 732 (Fed. Cir. 2014)
2003	Deposition Excerpts of Jon Weissman, <i>Ancora Techs., Inc. v. HTC America, Inc.</i> , Case No. 2:16-cv-01919 (W.D. Wa. Sep. 9, 2019)
2004	Declaration of Ian Jestice, <i>Ancora Techs., Inc. v. HTC America, Inc.</i> , Case No. 2:16-cv-01919 (W.D. Wa. Aug. 26, 2019)
2005	Brief of Appellees HTC America, Inc. and HTC Corporation, <i>Ancora Techs., Inc. v. HTC America, Inc., HTC Corp.</i> , Case No. 18-1404 (Fed. Cir. Apr. 23, 2018)
2006	Declaration of Jon Weissman, <i>Ancora Techs., Inc. v. HTC America, Inc.</i> , Case No. 2:16-cv-01919 (W.D. Wa. Sep. 4, 2019)
2007	Terplan, Kornel, Morreale, Patricia, THE TELECOMMUNICATIONS HANDBOOK, CRC Press, 2000
2008	COMPUTER USER’S DICTIONARY, Microsoft Press, 1998
2009	MICROSOFT COMPUTER DICTIONARY FOURTH EDITION, Microsoft Press, 1999

2010	PC MAGAZINE ENCYCLOPEDIA, available at https://www.pcmag.com/encyclopedia (excerpt, definition of “Agent”)
2011	U.S. Patent No. 6,411,941 File History with Beeble White Paper
2012	Joint Claim Construction Chart, <i>Ancora Techs., Inc. v. TCT Mobile (US) Inc., Huizhou TCL Mobile Commc’n Co., Ltd., and Shenzhen TCL Creative Cloud Tech. Co., Ltd.</i> , Case No. 8:19-cv-02192 (Dkt. #49, 49-1, 49-2)
2013	Declaration of Dr. David Martin, Ph.D., <i>Sony Mobile Commc’ns AB, Sony Mobile Commc’ns, Inc., Sony Elecs. Inc., and Sony Corp. v. Ancora Techs., Inc.</i> , IPR2021-00663, Ex. 2015 (PTAB Apr. 23, 2021)
2014	U.S. Patent No. 6,189,146 (Misra)
2015	U.S. Patent No. 5,479,639 (Ewertz)
2016	Decision Denying Institution of Inter Partes Review, <i>Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. v. Ancora Technologies, Inc.</i> , IPR2020-01184
2017	Declaration of Ian Jestice, <i>Ancora Technologies Inc. v. LG Electronics Inc., LG Electronics U.S.A. Inc., Samsung Electronics Co., Ltd., and Samsung Electronics America, Inc.</i> , Case No. 1:20-cv-00034 (Dkt. # 44-8)
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2020	U.S. Patent No. 5,734,819 (Lewis)
2021	U.S. Patent No. 6,153,835 (Schwartz)
2022	<i>Ancora Techs. Inc. v. Apple, inc.</i> , Case No. 4:11-cv-06357 (Dkt. # 171-3) [Apple Inc.’s N.D. Cal. L.R. 3-3 (Invalidity) Disclosures]
2023	Petition, <i>HTC Corp. v. Ancora Techs. Inc.</i> , Case No. CBM2017-00054, Paper 1 (PTAB May 26, 2017)
2024	Institution Decision, <i>HTC Corp. v. Ancora Techs. Inc.</i> , Case No. CBM2017-00054, Paper 7 (PTAB Dec. 1, 2017)
2025	Croucher, “The BIOS Companion” (1997) (Excerpts)
2026	Transcript of Deposition of Dr. Andrew Wolfe (April 22, 2022)
2027	Joint News Release (February 14, 2005)
2028	March 25, 2022 Email from Board regarding IPR2021-01338 and IPR2021-01406
2029	[REDACTED] (Confidential)
2030	Declaration of Miki Mullor

2031	[REDACTED] (Confidential)
2032	[REDACTED] (Confidential)
2033	Reserved
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2040	Reserved
2041	Reserved
2042	Barron’s Dictionary of Computing and Internet Terms (5th Ed. 1996)
2043	Decision Granting Institution, Case No. IPR2020-01609, Paper 7 (PTAB Feb. 16, 2021)
2044	Free On-Line Dictionary of Computing (June 6, 1999), available at http://foldoc.org/bios
2045	U.S. Patent No. 5,684,951 (Goldman)
2046	Paul C. Kocher, <i>Timing Attacks on Implementations of Diffie-Hellman, RSA, DSS, and Other Systems</i> , Proceedings of 16 th Annual Int’l Cryptology Conf. (Aug. 18–22, 1996)
2047	Ancora’s Patent Owner Preliminary Response, <i>Sony Mobile Communications AB v. Ancora Techs., Inc.</i> , Case No. IPR2021-0063, Paper 13 (PTAB Apr. 23, 2021)
2048	[REDACTED] (Confidential)
2049	[REDACTED] (Confidential)
2050	[REDACTED] (Confidential)
2051	[REDACTED] (Confidential)
2052	Patent Owner’s Oral Hearing Demonstratives

3001	Order Granting Request for Ex Parte Reexamination, U.S. Patent No. 6,411,941 (11/17/2021)
3002	Office Action in Ex Parte Reexamination, U.S. Patent No. 6,411,941 (3/11/2022)

I. Petitioner Fails To Establish Lower-Value Agreement Nexus

Petitioner bears the burden to establish a nexus between the lower-value agreements and the '941 patent's strength, *Quanergy Sys., Inc. v. Velodyne Lidar USA, Inc.*, 24 F.4th 1406, 1418 (Fed. Cir. 2022), and here Petitioner presents no facts to establish nexus for [REDACTED], including to explain (or rule out) the reasons these agreements were reached. Indeed, in the context of addressing all licenses of record at trial, *see* Paper 50 at 74-77, Petitioner's counsel admitted that "parties settle cases for various reasons" and that *here* "***we do have a lack of evidence***" of those reasons, *id.* at 76:20-21, 77:19-20. Given this conceded evidentiary gap, Petitioner resorts entirely to speculation about the timing of agreements relative to IPR institutions to establish nexus, but such speculation cannot establish that these agreements reflect weakness in the '941 patent. *Quanergy*, 24 F.4th at 1418. Thus, the lower-value agreements are not "probative."

Petitioner's core argument assumes that if a lower-value license is entered shortly after IPR institution, that reflects acquiescence to a patent's weakness. *See* Pet. Br. 4-6. This is the definition of speculation. And there is *no* authority in *any* tribunal to hold that a lower-value license may be presumed to reflect patent weakness. For good reason. Unlike the probative "acquiescence" of high-value agreements, *Ancora Techs., Inc. v. Roku, Inc.*, 140 F.4th 1351, 1363 (Fed. Cir. 2025), parties enter lower-value agreements for reasons *unrelated* to patent strength. *See*

Iron Grip Barbell Co. v. USA Sports, Inc., 392 F.3d 1317, 1324 (Fed. Cir. 2004).

Here, Petitioner did not present any evidence about the actual reasons for entering the lower-value licenses, including taking Ancora's deposition but never once asking *why* these agreements were made. EX1034 at 18-24, 26-27, 91.

In any event, the very existence of this proceeding refutes Petitioner's speculation of "Ancora's own recognition that the claims are obvious over the Hellman/Chou combination." Pet. Br. 4. Ancora faced the combination head on in *Petitioner's* IPR and did not settle with *Petitioner* for "walk away" amounts. The reason is simple: Ancora believes in the strength and value of the '941 patent as reflected in the [REDACTED]¹ [REDACTED], which further show that the lower-value agreements were entered into for unrelated economic reasons, thus negating any possible nexus. *See, e.g., Iron Grip*, 392 F.3d at 1324.

II. Petitioner Ignores That the Federal Circuit Confirmed Nexus of the High-Value Agreements

Petitioner attempts to downplay the [REDACTED] but conspicuously ignores that the Federal Circuit found these agreements had such a strong nexus that they "should have been given more, if not controlling, weight in the Board's obviousness determination." *Ancora*, 140 F.4th at 1362-64.

¹ The Federal Circuit unambiguously considered [REDACTED], contrary to Petitioner's claim the Court "did not disturb" the Board's decision to disregard it.

First, Petitioner argues that licenses are “most probative” when entered outside of litigation. But the Federal Circuit considered the evidence here and reached the opposite conclusion, finding that the “evidence supports a nexus finding”—namely, that “the settlements resulting in licenses were reached ... after four years of litigation, within a month of trial, and one day before trial”; that “the license payments also far exceeded the cost of litigation, and the defendants were fully aware of the relevant prior art.” *Id.* at 1363. “[C]lear evidence that substantial license fees were paid for licenses to a specific patent late in a litigation should be given the significance that their magnitude deserves.” *Id.*

Second, Petitioner cites *Cole Kepro Int’l, LLC v. VSR Indus., Inc.*, 695 F. App’x 566 (Fed. Cir. 2017) to claim that licensing evidence is “most probative” when there is industry-wide acquiescence. But *Cole Kepro* does not stand for that proposition, as the court merely affirmed that the patentee’s licensing evidence little nexus “was outweighed by [the] evidence of obviousness.” *Id.* at 572.

Third, again citing *Cole Kepro*, Petitioner argues that licensing evidence is “most probative” when a per-unit royalty is established. Again, *Cole Kepro* **does not say that**. And the Federal Circuit has never suggested that a per-unit royalty is required to evaluate the “magnitude of licensing payments” like the ones here that were made as a single payment. *Ancora*, 140 F.4th at 1363.

Fourth, Petitioner downplays [REDACTED] indisputable

knowledge of Hellman and Chou by speculating that “Ancora has never suggested [REDACTED] was aware of their use in combination ... or that any of the three had preserved the Hellman/Chou combination for their respective trials.” Paper 58 at 8-9. The Federal Circuit rejected these arguments. *Ancora*, 140 F.4th at 1363.

Petitioner concludes by arguing that the high-value agreements cannot carry weight in view of the lower-value agreements. But even if one were to consider all of the agreements together ([REDACTED]), the average sum paid per licensee is *still* [REDACTED], well in excess of [REDACTED] cost of litigation. EX2035, EX2031, EX2032, EX1050, EX1052, EX1053, EX1054, EX1051; PO Resp. 69; Pet. Reply 25-26.

III. The Obviousness Case Is Not “Strong”

Petitioner rewrites history to claim its case was “exceedingly strong.” But Petitioner never contended the Hellman/Chou combination was predictable or involved only minor modifications, *see* Paper 1; Paper 33, and took six pages to explain its reasons a POSA would be motivated to make the necessary changes, *see* Paper 1 at 30-35. Petitioners’ expert dedicated nearly 30 pages of analysis to Claim 1, never once asserting that combination was simple or strong. EX1003 at 44-73.

The Board also never found that the “*prima facie* case” of obviousness is exceedingly strong as Petitioner claims. Pet. Br. 10. It found instead only that the case was proven “by a preponderance of the evidence” and the combination

“account[s] for all limitations of Claim 1 and that Petitioner has shown an *adequate* motivation to combine.” Paper 49 at 39—a far cry from finding the case “strong.” And if the Federal Circuit agreed that Petitioner’s obviousness case was “strong,” it would have affirmed despite the Board’s errors as to nexus. *See, e.g., S. Alabama Med. Sci. Found. v. Gnosis S.P.A.*, 808 F.3d 823, 828 (Fed. Cir. 2015).

Further, Petitioner’s attempt now to recast the Hellman/Chou combination as “strikingly simple” is refuted by the fact that Petitioner’s argument required multiple, intricate modifications to both references. These include, as the Board found, the need to (1) “implement Hellman on a computer in which the same erasable, non-volatile memory 37 . . . stored both the license information disclosed in Hellman and the BIOS,” Paper 48 at 33; (2) have “Chou provide[] the motivation to implement the storing of license records in” Hellman’s update unit, *id.* at 36; and (3) use Hellman’s “authorization and billing unit 13 [to] cooperate with the update unit 36 to act as the ‘agent,’” *id.* at 37. This is nothing like cases finding “strong” obviousness, as in *Agrizap, Inc. v. Woodstream Corp.*, in which the “only difference between the Gopher Zapper [prior art] and the asserted claims . . . is the type of switch used to complete the circuit.” 520 F.3d 1337, 1344 (Fed. Cir. 2008); see also, *Tokai Corp. v. Easton Enters., Inc.*, 632 F.3d 1358, 1371 (Fed. Cir. 2011) (“the components required to assemble the claimed inventions are ‘simple mechanical parts that are well known in the art.’”).

Respectfully submitted,

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Dated: September 12, 2025

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CERTIFICATE OF SERVICE

The undersigned certifies in accordance with 37 C.F.R. § 42.6(e) that on September 12, 2025, a copy of the foregoing **PATENT OWNER'S RESPONSIVE BRIEF ON REMAND**, was served via electronic mail to the attorneys listed below at PerkinsService-Nintendo-Ancora-IPR@perkinscoie.com:

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